

MINUTES
CITY COUNCIL AD HOC COMMITTEE ON ETHICS
TENTH FLOOR CONFERENCE ROOM
WEDNESDAY, AUGUST 10, 1994 -- 4:30 P.M.

Meeting was called to order at 4:45 p.m.

MEMBERS PRESENT:

Councilmember Rick Lilly, Chair
Councilmember Ellen Beal, Vice-Chair
Councilmember Sandy Allen, Member

OTHERS PRESENT:

Rita Deason, CCSL
Mary Massoglia, CCSL
Vivian Bloom, CCSL
Russell Smith, Citizen
Alexander Bold, CCSL
Margaret Herp, Citizen
Paul Scott CBL
Dick Collins, CBL
Joyce Meissnier, Ethics Board
Ronald Druger, General Retirement Board
Steve Harry, CCSL
Liza Estlund Olson, Mayor's Office
Mayor David Hollister
James Smiertka, City Attorney
Greg Koessel, Internal Auditor
Tina Gallante, Council Staff

APPROVAL OF MINUTES

COUNCILMEMBER BEAL MOVED TO APPROVE THE MINUTES OF THE FEBRUARY 8, MAY 16, AND JULY 14, 1994, MEETINGS AS SUBMITTED. MOTION CARRIED, 3-0.

Councilmember Lilly indicated Mr. Smiertka brought up proposed ballot language for the Committee to review and the item will be discussed under Other.

ACTION/DISCUSSION

Consideration: City Council Investigation of Early Retirement

Councilmember Lilly informed the Committee that Mayor Hollister was here to make an announcement relative to the Early Retirement Program.

Mayor Hollister explained that he met with Mr. Smiertka today and reviewed a memorandum dated July 21, 1992, from Mel McWilliams to Stephen Duarte, which advised Mr. Duarte that the Early Retirement Program could not be done except by ordinance. This made it clear to himself that the "principal architects" of the plan knew it had to be done by ordinance. A follow-up memorandum of December 10, 1993, from Mr. McWilliams to Mr. Alvan Knot cited that Mr. McWilliams had raised this issue on several occasions.

Mayor Hollister stated he met with Council President Brockwell this afternoon and a letter was drafted to Prosecuting Attorney Martin asking him to reconsider his position on a Grand Jury, as these memorandums clearly establish the fact there was prior knowledge by the principal architects, naming Mr. Duarte, Mr. McKane, Ms. Lazar and Mr. Knot, that this should have been done by ordinance.

Mayor Hollister asked that the Committee and Council defer their investigation until Mr. Martin responds. He believes this is sufficient information to warrant the Grand Jury.

Councilmember Lilly submitted a chronological piece of information with respect to the Retirement Board meetings which he also felt should go to Mr. Martin. He read several various points out of certain Retirement Board meetings and documented each according to date. (Appropriate document attached.) All points reflected that members of the Retirement Board were aware that the Early Retirement plan needed to be implemented by ordinance. Councilmember Lilly also relayed the information that the Retirement Board was expending funds out of the Retirement System without Council authorization. Last week he requested that City Clerk Slade conduct a search which concluded there was never any ordinance passed on to the City Council for their consideration. At one time six members of the Retirement Board were eligible for Early Retirement and none of them disclosed they had a potential conflict of interest. He believes this information supports the findings Mr. Smiertka found in the newly introduced memorandums. He firmly believes it appears funds were expended out of the Retirement Fund illegally.

The Committee thanks the Mayor for making his remarks.

COUNCILMEMBER ALLEN MOVED TO HOLD OFF ON ANY FURTHER ACTION UNTIL THE CITY RECEIVES WORD FROM MR. MARTIN AND IF THERE IS A DECLINE FOR A GRAND JURY, SHE SUGGESTS THE ETHICS BOARD BE ALLOWED TO CONTINUE THEIR INVESTIGATION.

Councilmember Lilly realizes that is also the wish of Councilmember Beal; however, he does not believe the Council can give the Ethics Board subpoena power, as it is not given to Boards through the Charter. Mr. Smiertka responded that without further research, he believes that no, the Council can not do that.

Councilmember Beal stated this issue was raised repeatedly with Mr. Knot in December of 1992 who indicated it was a "simple house keeping matter" and said nothing about a paper record. It was stated repeatedly, and she even stated the matter could be settled by passing the proper ordinance amendment. The minutes of the Retirement Board were in front of the City Council when these matters were first brought up. She would encourage an immediate response from Mr. Martin but suspects he has already seen the documents in the past. She referred to a conversation she had with Mr. John Mertz who stated the Council is making illegal payments out of the Pension Fund because it has never been adopted by ordinance amendment. Mr. Mertz wants the power to finish what the Ethics Board started. She believes the Council does not have the wherewithal, the time, or the moral gumption to conduct the investigation and feels it should be turned over to the Ethics Board.

Councilmember Lilly pointed out he does not believe the Council will be investigating ourselves totally. The power of investigation was granted in the Charter to the City Council. He believes there are nine different agencies that were involved in putting the Early Retirement Plan together: City Council, Mayor's Office, City Clerk's Office, City Attorney's Office, Finance Department, Retirement Board, Personnel Department, Labor Relations, and legal firms employed by the City. He feels the Charter was set up to do these types of investigations and he has the gumption to go through with it and is not supportive of sending it back to the Ethics Board. He stated that one of the real issues is that policies and procedures were lax in the City and it allowed for the transferring of funds without Council authorization.

Councilmember Allen feels that at this point we have to wait for Mr. Martin's response and if he does not feel there is enough information for a Grand Jury we can then decide what to do next. If Mr. Smiertka indicates the Ethics Board does not have any more power or the Council cannot empower them, then the Council will have to look at our own investigation. She believes this action could set a very dangerous precedent as nothing of that type has been done and she is not sure the Council even knows how to do it.

The Committee briefly spoke regarding the charge from Committee of the Whole. There was some disagreement on the charge and actually what the most important points are with respect to the investigation.

Councilmember Beal requested a written legal opinion from the City Attorney as to how the Council could possibly fashion a continued investigation of the Ethics Board investigation.

Councilmember Lilly reminded the Committee about the hundreds and thousands of dollars that were transferred illegally in the Finance Department. He feels it is the Council's responsibility to review the budget policies that were used by the Finance Department and get a handle on the procedures utilized so that a situation such as the Early Retirement Plan does not happen again.

The Committee engaged in discussion relative to actual needs to be investigated by Council and the separation of items that deal with the McKane and Blair cases and the investigation of the Finance Department's policies used. Mr. Smiertka stated that the Ethics Board does not have the subpoena power that Council does and he will have to research the fact on whether the Council can delegate subpoena power to the Board, but he does not believe the Council can in fact do that. He did state that review of future oversight of City departments is something more appropriate for the Council to debate. The Committee must define what they are after.

Councilmember Beal reminded the Committee that the Council has never approved an ordinance amendment which means we are making illegal payments out of the pension fund and feels the Council must first take care of the items that can be taken care of "right now." She would like to get with members of the Ethics Board and see where they stand and have the City Attorney work with them on coming up with an investigation that will work. She pointed out that a time limit should be given to Mr. Martin with respect to Mayor Hollister's findings.

Councilmember Allen feels it is important to get to the bottom line and give the public what they want.

The Committee then heard from the public on the matter.

Councilmember Jones urged the Committee to involve the members of the Ethics Board in order to receive the benefit of both groups.

Mr. Scott stated he still believes that a Grand Jury is the way to go.

Mr. Bolt explained that the Early Retirement Plan was thought of as just being the tip of the iceberg. He urged the Committee to be

creative and do whatever necessary to continue the investigation and involve the Ethics Board and the City Attorney. He is also concerned with obstructionism and wants to make sure all those involved in criminal activity are prosecuted.

Mr. Russell feels that this Committee should work in conjunction with the Ethics Board and go as far as you can.

Ms. Meissner, speaking not as a member of the Ethics Board but as a private citizen, is concerned about the message that is going across to the citizens of Lansing. She wants to make sure the Ethics Board is valued and feels the Council has an obligation to clear the matter up.

Ms. Langswager feels there should be other individuals sought to conduct the investigation.

Ms. Deason commented that she does not feel the Council should conduct the investigation because they cannot agree on matters. She feels there needs to be outside help.

Councilmember Beal stated that an investigation of just the Finance Department will not satisfy the public.

There was an extended discussion with respect to an amendment of Councilmember Allen's motion and the following motion was finally made after the details were worked out:

COUNCILMEMBER BEAL MOVED TO AMEND COUNCILMEMBER ALLEN'S MOTION TO ASK FOR A RESPONSE WITHIN TEN DAYS FROM THE PROSECUTOR REGARDING THE NEW INFORMATION FROM THE MAYOR AND TO RECOMMEND TO THE COUNCIL -- COMMITTEE OF THE WHOLE -- TO UNDERTAKE AN INVESTIGATION OF THE POLICIES THAT WERE IN PLACE AT THE TIME OF THE EARLY RETIREMENT AND ANY OTHER PRACTICES IN THE FINANCE DEPARTMENT THAT MAY NEED INVESTIGATING THAT ANY FINDINGS FROM THE INVESTIGATION RELATIVE TO ACTIVITIES OF A CONFLICT NATURE BE PASSED ON TO THE ETHICS BOARD OF THEIR INVESTIGATION AND THAT ANY FINDINGS OF A CRIMINAL NATURE BE PASSED ON TO THE CITY ATTORNEY FOR ACTION. AND REMEDIED AND THIRDLY, THAT THE ETHICS BOARD IN CONCERT WITH THE CITY ATTORNEY COME BACK IN TWO WEEKS AND TELL THE AD HOC COMMITTEE ON ETHICS, IN WORKING WITH THE CITY ATTORNEY TO BETTER UNDERSTAND WHAT THEIR POWERS ARE, WHAT THEY WOULD LIKE TO DO IN TERMS OF COMPLETING THEIR INVESTIGATION OF THE EARLY RETIREMENT ISSUE AND WHAT THE ETHICS BOARD NEEDS FROM THE COUNCIL TO CONTINUE THE INVESTIGATION.

OTHER

**Amending Proposed Charter Revisions -- Article V, Chapter 5
of the Lansing Charter and Approving Revised Ballot
Language for Placement on the November 1994 General
Election Ballot**

COUNCILMEMBER BEAL MOVED TO APPROVE THE AMENDMENTS
TO THE CHARTER. MOTION CARRIED, 3-0.

ADJOURN:

Meeting was adjourned at 6:20 p.m.

Respectfully submitted,

**Tina M. Gallante
Legislative Secretary**

Approved by the Committee.

Signed by:

Paul J. Lilly

COUNCILMEMBER RICK LILLY, CHAIR

Appropriate documents attached.